

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 20 February 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public

Decision on requests for leave to reply to Defence response ICC-02/11-01/11-765

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Judge Geoffrey Henderson, acting as Single Judge on behalf of Trial Chamber I ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case'), having regard to Regulations 24(5) and 34(c) of the Regulations of the Court ('Regulations') issues the following 'Decision on requests for leave to reply to Defence response ICC-02/11-01/11-765'.

1. On 16 December 2014, the Office of the Prosecutor ('Prosecution') requested to join the *Gbagbo* case and the case of *The Prosecutor v. Charles Blé Goudé* ('Joinder Request').¹ On 6 January 2015, the Legal Representative of Victims ('LRV') filed a response supporting the Joinder Request ('LRV Joinder Response').² That same day, the Chamber rejected a challenge to its competence to hear the Joinder Request and extended the deadline for any response to the Joinder Request to 21 days from notification of its French translation, as well as the French translation of the 'Decision on the confirmation of charges against Charles Blé Goudé'.³
2. On 9 February 2015, in light of the arguments raised by the Defence,⁴ the Single Judge found that there were "exceptional circumstances" under Regulation 37(2) of the Regulations and authorised the defence for Mr Gbagbo ('Defence') to file a 40-page response to the Joinder Request.⁵

¹ Prosecution's Request to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé*, 16 December 2014, ICC-02/11-01/11-738, with public annex.

² Consolidated Response of the Common Legal Representative of victims to the Prosecution's request to join the *Gbagbo* and *Blé Goudé* cases (ICC-02/11-01/11-738) and to the subsequent Defence's request (ICC-02/11-01/11-742), 6 January 2015, ICC-02/11-01/11-743.

³ Decision on the Defence challenge to the Chamber's competence to hear the Prosecution's Joinder Request and on its request for a variation of the response deadline, 6 January 2015, ICC-02/11-01/11-744, page 6.

⁴ Requête urgente déposée par la Défense afin d'être autorisée à répondre à la demande de jonction des affaires *Gbagbo* et *Blé Goudé* formulée par le Procureur (ICC-02/11-01/11-738-tFRA) dans un document excédant le nombre de pages prévu à la Norme 37(1) du Règlement de la Cour, 9 February 2015, ICC-02/11-01/11-763.

⁵ Email from Trial Chamber I Legal Officer to Defence on 9 February 2015 at 18:01.

3. The Defence responded to the Joinder Request on 12 February 2015 ('Defence Joinder Response')⁶ requesting, alternatively, that the Chamber (i) reject the Joinder Request *in limine* due to an absence of adequate motivation and invite the Prosecution to submit a new, more detailed and precise request;⁷ (ii) dismiss the request to join the charges because the charges are not the same and therefore cannot be joined under Article 64(5) of the Rome Statute ('Statute');⁸ (iii) dismiss the Joinder Request and order the Prosecution to provide further information (namely, for each charge, the facts, the legal characterisation and the mode of liability that should be joined) because joinder would breach the accused's rights and negatively impact on the administration of justice;⁹ (iv) if the charges are joined, dismiss the request to join the trials under Rule 136 of the Rules of Procedure and Evidence ('Rules');¹⁰ or (v) if the charges are joined, order the Prosecution to give all information necessary for a discussion as to the potential joinder of the trials, and hold a status conference in order to set, *inter alia*, a new trial commencement date.¹¹
4. On 17 February 2015, the Prosecution requested leave to reply to a discrete portion of the Defence Joinder Response ('Prosecution Request'),¹² namely that portion addressing the interpretation and application of Article 64(5) of the Statute and Rule 136 of the Rules ('Issue').¹³ The Prosecution submits that the Issue is novel and may significantly affect the Chamber's decision on the

⁶ Réponse de la Défense à la « Demande de jonction des affaires Le Procureur c. Laurent Gbagbo et Le Procureur c. Charles Blé Goudé » (ICC-02/11-01/11-738-tFRA) déposée par l'Accusation, 12 February 2015, ICC-02/11-01/11-765.

⁷ Defence Joinder Response, ICC-02/11-01/11-765, paras 3-21 and page 33.

⁸ Defence Joinder Response, ICC-02/11-01/11-765, paras 22-92 and page 33.

⁹ Defence Joinder Response, ICC-02/11-01/11-765, paras 93 and page 33.

¹⁰ Defence Joinder Response, ICC-02/11-01/11-765, paras 94-109 and page 33.

¹¹ Defence Joinder Response, ICC-02/11-01/11-765, para. 100 and page 34.

¹² Prosecution application for leave to reply to Defence response ICC-02/11-01/11-765, 17 February 2015, ICC-02/11-01/11-771.

¹³ Prosecution Request, ICC-02/11-01/11-771, paras 2 and 4.

Joinder Request.¹⁴ If granted leave to reply, the Prosecution undertakes to address the Issue concisely, without repeating arguments previously made.¹⁵

5. The Defence responded to the Prosecution Request on 19 February 2015 ('Defence Response').¹⁶ It contends that the Defence Joinder Response contains no novel submissions and the Prosecution could have anticipated that it would address the Issue¹⁷ and, in particular, the question of the 'joinder of the charges'.¹⁸ The Defence argues that, if the Chamber were to grant the Prosecution Request, it would allow the Prosecution to alter the framework of the debate and the Defence would therefore be well-founded in seeking leave to reply to any reply.¹⁹ The Defence stresses that a reply should only be used to address new matters arising from a response and not to reinforce unsubstantiated analysis in prior filings.²⁰
6. Also on 19 February 2015, the LRV filed a response supporting the Prosecution Request and also requesting leave to reply to the Defence Joinder Response.²¹ She submits that further Prosecution submissions are necessary in order to clarify the legal framework applicable to joinder.²² The LRV stresses that joinder is in the interests of the victims.²³ Finally, she submits that the

¹⁴ Prosecution Request, ICC-02/11-01/11-771, para. 5.

¹⁵ Prosecution Request, ICC-02/11-01/11-771, para. 6.

¹⁶ Réponse de la Défense à la « Prosecution application for leave to reply to Defence response ICC-02/11-01/11-765 » (ICC-02/11-01/11-771), 19 February 2015, ICC-02/11-01/11-773. In light of the time limit set out in Regulation 34(c) of the Regulations, the Single Judge ordered that any response to the Request be filed by 19 February 2015. See, Email from Trial Chamber Legal Officer to Defence on 17 February 2015 at 17:26.

¹⁷ Defence Response, ICC-02/11-01/11-773, paras 21-22, 24-25, 28 and 37.

¹⁸ Defence Response, ICC-02/11-01/11-773, para. 32.

¹⁹ Defence Response, ICC-02/11-01/11-773, para. 31.

²⁰ Defence Response, ICC-02/11-01/11-773, paras 34, 39, 41 and 43.

²¹ Response of the Common Legal Representative of victims to the "Prosecution application for leave to reply to Defence response ICC-02/11-01/11-765" (ICC-02/11-01/11-771), 19 February 2015, ICC-02/11-01/11-772 ('LRV Response').

²² LRV Response, ICC-02/11-01/11-772, paras 10 and 12-16.

²³ LRV Response, ICC-02/11-01/11-772, paras 10-11 and 13.

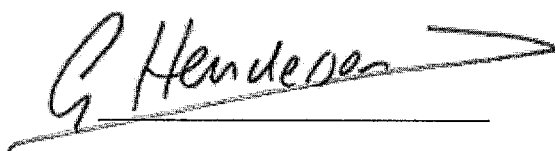
Defence Joinder Response concerns observations made in the LRV Joinder Response and addresses novel issues.²⁴

7. The Single Judge has already acknowledged the 'crucial importance of the issue [of joinder] and the potential impact the Chamber's decision could have on the conduct of proceedings and the rights of the accused'.²⁵ He considers that the potential impact of the Chamber's decision also extends to the interests of the victims. The Single Judge further notes Prosecution and LRV submissions concerning the novel nature of the Issue at the Court. The Single Judge therefore considers that the Chamber may benefit from Prosecution and LRV submissions in reply to that portion of the Defence Joinder Response relating to the Issue.²⁶

FOR THE FOREGOING REASONS, THE SINGLE JUDGE

GRANTS the Prosecution and LRV requests for leave to reply to the Defence Joinder Response no later than 23 February 2015.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, reading "G. Henderson", with a horizontal line underneath and a long arrow pointing to the right.

Judge Geoffrey Henderson

Single Judge

Dated 20 February 2015

At The Hague, The Netherlands

²⁴ LRV Response, ICC-02/11-01/11-772, paras 17-18.

²⁵ Decision on Defence challenge to the Chamber's competence to hear the Prosecution's Joinder Request and on its request for a variation of the response deadline, 6 January 2015, ICC-02/11-01/11-744, para. 10.

²⁶ The parties and participants were informed of this disposition by way of email in advance of the present decision. See Email from Trial Chamber I Legal Officer to parties and participants on 19 February 2015 at 17.43.